



VIA FOIA online

August 8, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Phone: (202) 566-1667

Re: Freedom of Information Act request – U.S. Global Change Research Program

Dear FOIA Officer:

On behalf of the Sierra Club, I am writing to request that the Environmental Protection Agency (EPA) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.* This request is sent to you because you were identified as the proper person to receive such requests. If this request should be directed at another person, please forward this request to that person.

Sierra Club is the nation’s oldest grassroots organization. It has more than 3 million members and supporters nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

Sierra Club is a leading non-governmental organization seeking to educate and mobilize the public on issues of climate change, fossil fuel energy and clean energy. It has been conducting multiple public campaigns around these issues, including its Beyond Coal Campaign¹

¹ Sierra Club’s Beyond Coal campaign’s main objective is to replace dirty coal with clean energy by mobilizing grassroots activists in local communities to advocate for the retirement of old and outdated coal plants and to prevent new coal plants from being built. Coal burning responsible for one third of US carbon emissions—the main contributor to climate disruption. It is also making us sick, leading to as many as 13,000 premature deaths every year and more than \$100 billion in annual health costs.

and Dirty Fuels Campaign. This request is made on behalf of those campaigns, as well as the organization's long standing interest in government accountability and transparency.

Sierra Club is concerned that vital research by EPA under the U.S. Global Change Research Program (USGCRP), in which EPA is a participating agency, and publication of public reports on the results of USGCRP research, including EPA research, is at risk of being eliminated, de-funded, underfunded and/or substantially delayed under the new Presidential administration. This research and publication of its results is mandated by the Global Change Research Act of 1990, Public Law 101-606 (11/16/90) 104 Stat. 3096-3104, 15 U.S.C. §§ 2921-2961. This research and the information in the public reports on the results of the research is of substantial interest to Sierra Club members and its partners, as well as the general public.

Sierra Club Requests Records² related to EPA's work pursuant to the Global Change Research Act of 1990:

Background:

EPA engages in multiple programs pursuant to the Global Change Research Act of 1990. The following EPA work under the U.S. Global Change Research Program ("USGCRP") is described in Appendix II of OUR CHANGING PLANET: The U.S. Global Change Research Program for Fiscal Year 2017, A Supplement to the President's Budget, developed with Federal support through the U.S. Global Change Research Program under Environmental Protection Agency Contract No. NNH15CN83C, *available at* <http://www.globalchange.gov/browse/reports/our-changing-planet-FY-2017>, last visited August 7, 2017. The FY 2016 Budget allocated \$19,000,000 and the FY 2017 Budget requested \$22,000,000 for this EPA USGCRP work. Appendix II includes the following description of the USGCRP work performed by EPA:

The core purpose of the Environmental Protection Agency's (EPA's) global-change research program is to develop scientific information that supports policy makers, stakeholders, and society at large as they respond to climate change and associated impacts on human health, ecosystems, and socioeconomic systems. EPA's research is driven by the Agency's mission and statutory requirements, and includes: (1) improving scientific understanding of global change effects on air quality, water quality, ecosystems, and human health in the context of other stressors; (2) assessing and defining adaptation options to effectively prepare for and respond to global change risks, increase resilience of human and natural systems, and promote their sustainability; and (3)

² "Records" means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, and all of its Offices, Regions and other subdivisions.

developing an understanding of the potential environmental and human health impacts of greenhouse gas emissions reduction technologies and approaches to inform mitigation solutions. EPA Program Offices and Regions leverage this research to support mitigation and adaptation decisions and to inform communication with external stakeholders and the public.

EPA relies on USGCRP to develop high-quality scientific models, data, and assessments to advance understanding about physical, chemical, and biological changes to the global environment and their relation to drivers of global climate change. Satellite and other observational efforts conducted by USGCRP agencies are crucial to supporting EPA's efforts to understand how land-use change, population change, climate change, and other global changes are affecting ecosystems, and the services they provide. EPA's global-change research applies and extends these results using regional and local air quality, hydrology, and sea-level rise models to better understand the impacts of climate change to specific human health and ecosystem endpoints in ways that enable local, regional, and national decision makers to develop and implement strategies to protect human health and the environment. In turn, EPA's research provides USGCRP agencies with information and understanding about the connections between global change and impacts at local, regional, and national scales, as well as how mitigation and adaptation actions may influence global changes.

EPA's research informs approaches to prepare for, adapt to, and minimize the impacts of climate change, including extreme weather events, wildfire, and rising sea levels, and their impacts on human health and well-being and social and economic systems. Other EPA program activities include the development and application of economic and biophysical models to generate projections of potential future greenhouse gas emissions trajectories and mitigation scenarios. EPA also applies long-term datasets and analytical tools to communicate observed climate change indicators and conduct economic and risk modeling to examine and project analyze impacts and economic damages associated with global mitigation scenarios. EPA collaborates with other agencies and numerous stakeholders to develop the Inventory of U.S. Greenhouse Gas Emissions and Sinks, which is submitted to the United Nations in accordance with the Framework Convention on Climate Change. Lastly, EPA efforts include technical evaluation of biogenic emissions fluxes associated with biomass use for energy.

Records Requested:

For all EPA programs and activities described above, the Sierra Club requests all Records including, but not limited to, the following:

1. All Records regarding proposed elimination or reduced levels of funding for the 2017-2018 fiscal year.
2. All Records regarding statutory obligations to perform a program or activity proposed for elimination or reduced funding for the 2017-2018 fiscal year.
3. All Records regarding how statutory obligations will be met after the program or activity is eliminated or receives reduced funding for the 2017-2018 fiscal year, including but not limited to performance of all or part of the program or activity by one or more other federal agencies.
4. All Records dated on or after January 20, 2017 regarding proposed or actual postponement, delay, or other scheduling changes with respect to performance of, or reporting of results of, a program or activity.
5. All Records, including drafts and interim versions, regarding the status on or after January 20, 2017 of any research or publication required by the Global Change Research Act of 1990, Public Law 101-606 (11/16/90) 104 Stat. 3096-3104, 15 U.S.C. §§ 2921-2961.
6. Without limiting the scope of the definition of "Records" in footnote 2 of this request, the Sierra Club specifically requests all letters, faxes, e-mails, text messages, notes of telephone calls, minutes of meetings, and electronic and magnetic recordings of meetings related to the USGCRP between EPA and any other federal agency, state or local agency, or non-governmental scientific organization, scientist or researcher.

Duty to Preserve Records

EPA must preserve all the records requested herein while this FOIA is pending or under appeal. EPA shall not destroy any records while they are the subject of a pending request, appeal, or lawsuit under the FOIA. 40 C.F.R. § 2.106; *see Chambers v. U.S. Dep't of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009) ("an agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under FOIA or the Privacy Act").

If any of the requested records are destroyed, the agency and responsible officials are subject to attorney fee awards and sanctions, including fines and disciplinary action. A court held EPA in contempt for "contumacious conduct" and ordered the agency to pay plaintiff's costs and fees for destroying "potentially responsive material contained on hard drives and email backup tapes." *Landmark Legal Found. v. EPA*, 272 F.Supp.2d 59, 62 (D.D.C. 2003); *see also Judicial Watch, Inc. v. Dep't of Commerce*, 384 F. Supp. 2d 163, 169 (D.D.C. 2005) (awarding attorneys' fees and costs because, among other factors, agency's "initial search was unlawful and egregiously mishandled and ...likely responsive documents were destroyed and removed"), *aff'd in relevant part*, 470 F.3d 363, 375 (D.C. Cir. 2006) (remanding in part to recalculate attorney fees assessed). In another case, in addition to imposing a \$10,000 fine and awarding attorneys' fees and costs, the court found that an Assistant United States Attorney prematurely "destroyed records responsive to [the] FOIA request while [the FOIA] litigation was pending" and referred him to the Department of Justice's Office of Professional Responsibility. *Jefferson v. Reno*, 123 F. Supp. 2d 1, 6 (D.D.C. 2000).

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested

records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to maintain public websites containing the requested information, so the public can access this important information regarding pollution in their communities.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The requested records relate to EPA programs, projects, and observations. These activities are unquestionably “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government.

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

The Department of Justice Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in part on whether the requested documents provide information that is not already in the public domain. This information will facilitate meaningful public participation in the decision-making process, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

The Sierra Club and its members have long-standing experience and expertise in the subject area of FOIA requests, specifically, issues related to the climate change, the Clean Air Act, the Clean Water Act, and the development and use of energy resources and protection of endangered species. Sierra Club also has a long standing interest in government accountability and transparency.

Sierra Club disseminates the information it receives through FOIA requests in a variety of ways, including, but not limited to: analysis and distribution to the media, distribution through publication and mailing, posting on the Club's website, emailing and list serve distribution to our members across the U.S., and via public meetings and events. Every year the Sierra Club website receives 26,298,200 unique visits and 30,358,239 page views; on average, the site gets 72,049 visits per day. Sierra Magazine is a bi-monthly magazine with a printed circulation of approximately 650,000 copies. Sierra Club Insider, an electronic newsletter, is sent to nearly 3,000,000 people twice a month. In addition, Sierra Club disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, the Sierra Club has published, posted, and disseminated numerous stories on coal and coal power plants regarding their impacts on health, the environment and alternative energy. This includes information on our various webpages, such as our [Beyond Coal Campaign](#) portal, our [Clean Energies Solutions](#) portal and our press releases. Sierra Club intends to share the information received from this FOIA request with the public.³

Sierra Club intends to share the information received from this FOIA request with the public.

Sierra Club unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the "public-at-large."

³ For example, the Sierra Club sought information about coal export and permitting activities in Oregon via a state public records act request at the Port of Coos Bay. All correspondence is published online and has received extensive media attention from press releases on the subject. See <http://content.sierraclub.org/environmentallaw/lawsuit/2013/sierra-club-challenges-dirty-and-dangerous-fossil-fuel-exports-oregon>.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities. The public’s understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of EPA’s “operations and activities,” as the requested records include information on EPA’s extensive participation in climate change research. The disclosure of the requested records is essential to the public’s understanding of EPA’s operations and activities. After disclosure of these records, the public understanding of EPA’s activities will be significantly enhanced. The requirement that disclosure must contribute “significantly” to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the “public interest” in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not “primarily” in the Sierra Club’s commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of EPA’s activities.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency’s regulations. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records on a rolling basis; at no point should the search for—or

deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at (415) 977-5764 or by e-mail at david.abell@sierraclub.org.



David Abell
Sierra Club
Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612